

The definition of fraud for purposes of this section will be determined in accordance with State law.

(b) For methods of investigation of situations which there is a question of fraud, that do not infringe on the legal rights of persons involved and are consistent with the principles recognized as affording due process of law.

(c) For the designation of official position(s) responsible for referral of situations involving suspected fraud to the proper authorities.

[36 FR 3869, Feb. 27, 1971]

**§ 235.111 Pre-eligibility fraud detection measures.**

(a) *State plan requirement.* A State plan under title IV, part A of the Social Security Act must contain a description of the verification measures to detect fraudulent applications for AFDC prior to the establishment of eligibility for such aid.

(b) *Definition.* For purposes of this section, *verification measures* are actions taken by a State agency (including actions taken by fraud personnel assigned to the initial application unit to investigate applicants suspected of committing fraud):

(1) To confirm information provided by an applicant to support his or her eligibility for AFDC; and

(2) To confirm information provided by an applicant that is relevant in determining the amount of the assistance payment.

Such actions involve the examination of supporting documentation in the applicant's possession and obtaining additional information, when necessary, from appropriate third party sources; also included are any periodic support activities taken by the State agency to enhance these actions. Examples of such measures include but are not limited to: Automated data matches to establish the accuracy of statements on the application; use of error prone profiles; home visits or collateral contacts; credit bureau inquiries; training on investigative interviewing techniques.

(c) *Annual evaluation.* A State agency shall make a written evaluation for each Federal fiscal year of the effectiveness of its verification measures,

submit a copy of the evaluation to the FSA Regional Office by February 15 of the following Federal fiscal year, and submit any appropriate amendments to its title IV-A State plan. The evaluation must include an assessment of verification measures such as home visits, credit bureau inquiries, data matches with entitlement programs, in addition to those included in the State's Income and Eligibility Verification System (IEVS), or other similar measures implemented by States. Information and data gathered in connection with a corrective action plan prepared pursuant to 45 CFR 205.40 may be utilized in preparing this evaluation.

(d) *Federal financial participation.* Verification measures to detect fraudulent applications will be matched as administrative costs at a 50 percent rate.

[55 FR 18728, May 4, 1990; 55 FR 43343, Nov. 16, 1990]

**§ 235.112 Optional AFDC Fraud Control Program.**

(a) *Scope.* A State agency under title IV-A may elect to establish and operate a fraud control program pursuant to section 416 of the Act. A State agency electing this optional program is required to proceed against any individual member of a family regardless of AFDC payment status who it believes to have committed an intentional program violation as described in paragraph (b) of this section through a State administrative hearing or by referring the matter to the appropriate authorities for civil or criminal action in a State or Federal court. In proceeding against such an individual, the State agency must coordinate its actions with any corresponding actions being taken under the Food Stamp program where the factual issue arise from the same or related circumstances.

(b) *Definition of intentional program violation.* An intentional program violation is an action by an individual, for the purpose of establishing or maintaining the family's eligibility for AFDC or for increasing or preventing a reduction in the amount of the grant, which is intentionally:

(1) A false or misleading statement or misrepresentation, concealment, or withholding of facts, or

(2) Any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity.

(c) *Disqualification penalties.* (1) An individual who, on the basis of a plea of guilty or nolo contendere or otherwise, is found to have committed an intentional program violation by a State administrative disqualification hearing pursuant to this section or by a State or Federal court will be treated in the following manner. The State agency shall not take the individual's needs into account when determining the assistance unit's need and amount of the assistance. Any resources and income of the disqualified individual will be considered available to the assistance unit. The individual's needs will not be taken into account for 6 months upon the first occasion of any such offense; 12 months upon the second occasion of any such offense; and permanently upon the third or a subsequent occasion of any such offense.

(2) *Duration of the penalty.* Any period for which a disqualification penalty is imposed shall remain in effect, without possibility of an administrative stay, unless and until the finding upon which the penalty was based is subsequently reversed by a court of appropriate jurisdiction but in no event shall the duration of the period for which such penalty is imposed be subject to review.

(3) *Applicability of the penalty.* A disqualification penalty imposed on an individual by one IV-A State agency may be used determining the appropriate disqualification penalty for the individual by another IV-A State agency. Where an individual with a prior violation(s) moves from one State to another and has been found to have committed an intentional program violation(s), the State agency may impose the penalty based on the number of such violations committed in other States. A State may establish interstate agreements with other States to share appropriate information.

In cases where a disqualification penalty and other sanctions or penalties apply:

(i) The disqualification penalties in this section shall be in addition to, and cannot be substituted for, any other sanctions or penalties which may be

imposed by law for the same offenses; and

(ii) The disqualification penalties imposed under this optional program only affect the individual concerned and cannot substitute for other sanctions under the AFDC program (e.g., failure to participate in JOBS or to cooperate in obtaining child support).

(d) *Notice requirements.* The State agency must provide all applicants with a written notice of the disqualification penalties for fraud under this section at the time of application. Individuals who are recipients on the date of approval of the State plan amendment implementing this optional program must be provided a written notice no later than the next redetermination for AFDC.

(e) *State plan requirements and budget information.* A State agency electing this optional program must operate such program in full compliance with section 416 of the Social Security Act and submit to the Department (with such revisions as may from time to time be necessary):

(1) A description of its fraud control program, and

(2) An initial budget estimate for the program.

(f) *Federal financial participation—(1) Allowable costs.* Federal financial participation (FFP) is authorized at the 50 percent reimbursement rate to a State agency with an approved plan to establish and operate a fraud control program pursuant to section 416 of the Social Security Act. All costs must adhere to cost principles found at OMB Circular No. A-87 (available from the Executive Office of the President, Publications Unit, room 2200, New Executive Office Building, 725 17th Street NW., Washington, DC 20503) and to cost allocation provisions found at §205.150 of this chapter.

(2) *Cost allocation.* Where common activities or efforts are undertaken in support of both the AFDC and Food Stamp programs, the cost allocation plan pursuant to §205.150 of this chapter must provide for a distribution of these costs to both programs.

[56 FR 64204, Dec. 9, 1991; 57 FR 1204, Jan. 10, 1992, as amended at 59 FR 12861, Mar. 18, 1994]